

Minutes of the
Board of Minerals and Environment Meeting
Matthew Environmental Education and Training Center
523 East Capitol Avenue
Pierre, South Dakota

January 17, 2008
10:00 a.m. CST

CALL TO ORDER AND ROLL CALL: The meeting was called to order by Chairman Richard C. Sweetman. The roll was called and a quorum was present.

BOARD MEMBERS PRESENT: Richard Sweetman, Lee McCahren, Linda Hilde, Dennis Landguth, Bob Duxbury, Mike DeMersseman, Pete Bullene, and Glenn Blumhardt.

BOARD MEMBERS ABSENT: Chuck Monson.

OTHERS PRESENT: See attached attendance sheet.

APPROVAL OF MINUTES FROM OCTOBER 18, 2007, MEETING: Motion by DeMersseman, seconded by Bullene, to approve the minutes from the October 18, 2007, Board of Minerals and Environment meeting, as mailed. Motion carried.

DEFENDERS OF THE BLACK HILLS V. DENR: Chairman Sweetman noted that the board members had received a copy of Circuit Judge John Delaney's decision to uphold the Board of Minerals and Environment's decision in the Powertech matter.

MINING ISSUES: Tom Cline was administered the oath by Lee McCahren and testified regarding transfers of liability, releases of surety, and exchange of surety (see attached matrix sheet).

Motion by Landguth, seconded by Hilde, to transfer liability and release \$15,490 from Stolpman Sand & Gravel, Bellingham, MN, Mine License No. 83-60, one site in Grant County, to Consolidated Ready Mix, Inc., Bellingham, MN, Mine License No. 06-831. Motion carried.

Motion by McCahren, seconded by Hilde, to transfer liability for one site in Walworth County from Gratech Company, Ltd., Berthold, ND, Mine License No. 98-662 to Miller Construction, Isabel, SD, Mine License No. 03-767. Motion carried.

Motion by Blumhardt, seconded by Bullene, to release liability for Sherbrooke Asphalt, Inc., Detroit Lakes, MN, Mine License No. 03-777, one site in Day County and one site in Roberts County, and to release liability for Dearborn Township, Wolsey, SD, Mine License No. 83-75, one site in Beadle County. Motion carried.

Eric Holm was administered the oath by Lee McCahren and testified regarding the exchange of surety for Pacer Corporation and Wharf Resources' surety increase.

On November 24, 2004, the department issued uncontested large scale Mine Permit No. 467 to Pacer Corporation for a two to three acre expansion of its BriteX mine located six miles northwest of Custer. The Board of Minerals and Environment visited this mine during a 2005 tour. The current application also included the revised operating and reclamation plans

for the entire mine site. Pacer was required to submit a \$147,150 reclamation bond to the department prior to commencement of mining in the expansion area. Pacer submitted the bond in the form of a Letter of Credit in November 2007. On November 8, 2007, Pacer asked the department if large scale Mine Permit No. 311 could be closed since the operating and reclamation plan in Permit No. 467 had superseded the operating and reclamation plan in Permit No. 311. The department recommended that large scale Mine Permit No. 311 be closed. Pacer's liability for the mine will continue under large scale Mine Permit No. 467. The department also recommended that the board exchange Surety No. 12 14 62 in the amount of \$31,700 for Wells Fargo Bank Letter of Credit NZS606546 in the amount of \$147,150. The \$31,700 surety bond will be released.

Motion by McCahren, seconded by Hilde, to exchange Surety No. 12 14 62 for Wells Fargo Bank Letter of Credit No. NZS606546 in the amount of \$147,150. Motion carried.

Mr. Holm reported that Wharf Resources submitted a \$208,022 increase to its reclamation bond to cover reclamation of a 40-acre expansion of the Wharf Mine. The board visited this area during its September 2007 tour of the Wharf Mine. The department recommended accepting the \$208,022 increase to Letter of Credit S18572/191556 that serves as Wharf's reclamation bond, thereby increasing the amount of the Letter of Credit to \$11,174,422.

Motion by DeMersseman, seconded by Duxbury, to accept the \$208,022 reclamation surety increase. Motion carried.

OIL AND GAS CASE NOS. 20-2007, 21-2007, and 22-2007 LUFF EXPLORATION COMPANY: Chairman Sweetman appointed Lee McCahren as hearing chairman for these cases. Mr. McCahren opened the hearing.

John Morrison, attorney for Luff Exploration Company, requested that these cases be combined into one hearing.

Roxanne Giedd, Deputy Attorney General, represented the Department of Environment and Natural Resources. She had no objection to combining the cases.

Richard George, manager of engineering, was administered the oath and testified on behalf of Luff Exploration Company regarding all three applications.

Case No. 20-2007 is the application of Luff Exploration Company to amend the applicable Orders for the Corey Butte Field to establish two 640-acre spacing units consisting of (1) the N/2 of Section 27 and the N/2 of Section 28; and (2) the S/2 of Section 27 and the S/2 of Section 28; all in T23N, R6E, Harding County, SD, and allow the drilling of a horizontal well with one or more laterals in the Red River "B" zone at any location not closer than 500 feet to the boundary of each spacing unit.

Exhibits offered and admitted into the record for Luff Exploration Company for Case No. 20-2007:

Exhibit 1 – General locator map showing existing Luff spacing units not in the S.R. unit, proposed new Luff spacing units, and Continental Resources spacing units.

Exhibit 2 – Explanation of what Luff Exploration Company is requesting
Exhibit 3 – Land plat showing requested 640-acre spacing units
Exhibit 4 – Sections 27 & 28 – two 640-acre spacing units
Exhibit 5 – N ½ Sec. 27 and N ½ Sec. 28 working interest owners, royalty owners, and overriding royalty interest owners
Exhibit 6 – S ½ Sec. 27 and S ½ Sec. 28 working interest owners, royalty owners, and overriding interest owners
Exhibit 7 – Contour map – sub-sea depth of Red River “B” Zone porosity
Exhibit 8 – Contour map – residual depth of Red River “B” zone porosity
Exhibit 9 – Production information
Exhibit 10 – Existing overlapping spacing units
Exhibit 11 – Secondary recovery Red River “B” Zone
Exhibit 12 – Summary of Luff’s request, Oil & Gas Case No. 20-2007

Fred Steece was administered the oath by Mr. McCahren and testified on behalf of the Department of Environment and Natural Resources regarding Case No. 20-2007.

Notice of the hearing was published twice on or before December 19, 2007, in the Black Hills Pioneer, the Pierre Capital Journal, the Rapid City Journal, and the Nation’s Center News. Affidavits of Publication are on file in the Department of Environment and Natural Resources Rapid City office.

The department received no petitions to intervene.

Motion by Sweetman, seconded by Blumhardt, to approve Case No. 20-2007, Luff Exploration Company. Motion carried.

Case No. 21-2007 is the application of Luff Exploration Company to amend the applicable Orders for the East Harding Springs Field to establish a 640-acre spacing unit described as all of Section 33, T23N, R6E, Harding County, South Dakota, and allow the drilling of up to two horizontal wells, each with one or more laterals in the “B” zone of the Red River pool, to any location not closer than 500 feet to the boundary of the spacing unit.

Exhibits offered and admitted into the record for Luff Exploration Company for Case No. 21-2007:

Exhibit 1 – General locator map showing existing Luff spacing units not in the S.R. unit, proposed new Luff spacing units, and Continental Resources spacing units.
Exhibit 2 – Explanation of what Luff Exploration Company is requesting
Exhibit 3 – Land plat showing requested 640-acre spacing unit
Exhibit 4 – Section 33, 640-acre spacing unit
Exhibit 5 – Working interest owners and royalty owners
Exhibit 6 – Contour map – sub-sea depth of Red River “B” Zone porosity
Exhibit 7 – Contour map – residual depth of Red River “B” zone porosity
Exhibit 8 – Production information
Exhibit 10 – Secondary recovery Red River “B” Zone
Exhibit 11 – Summary of Luff’s request, Oil & Gas Case No. 21-2007

Fred Steece testified on behalf of the Department of Environment and Natural Resources regarding Case No. 21-2007.

Notice of the hearing was published twice on or before December 19, 2007, in the Black Hills Pioneer, the Pierre Capital Journal, the Rapid City Journal, and the Nation's Center News. Affidavits of Publication are on file in the Department of Environment and Natural Resources Rapid City office.

The department received no petitions to intervene.

Motion by Hilde, seconded by Bullene, to approve Case No. 21-2007, Luff Exploration Company. Motion carried.

Case No. 22-2007 is the application of Luff Exploration Company to amend the applicable Orders for the Pete's Creek Field to establish a 960-acre spacing unit consisting of all of Section 15 and the E/2 of Section 16, T22N, R6E, Harding County, South Dakota, and allow the drilling of up to three horizontal wells, each with one or more laterals, in the Red River "B" zone to any location not closer than 500 feet to the boundary of the spacing unit.

Exhibits offered and admitted into the record for Luff Exploration Company for Case No. 22-2007:

- Exhibit 1 – General locator map showing existing Luff spacing units not in the S.R. unit, proposed new Luff spacing units, and Continental Resources spacing units.
- Exhibit 2 – Explanation of what Luff Exploration Company is requesting
- Exhibit 3 – Land plat showing requested 960-acre spacing unit
- Exhibit 4 – Section 15, 960-acre spacing unit
- Exhibit 5 – Working interest owners and royalty owners
- Exhibit 6 – Contour map – sub-sea depth of Red River "B" Zone porosity
- Exhibit 7 – Contour map – residual depth of Red River "B" zone porosity
- Exhibit 8 – Production information
- Exhibit 10 – Secondary recovery Red River "B" Zone
- Exhibit 11 – Summary of Luff's request, Oil & Gas Case No. 22-2007

Fred Steece testified on behalf of the Department of Environment and Natural Resources regarding Case No. 22-2007.

Notice of the hearing was published twice on or before December 19, 2007, in the Black Hills Pioneer, the Pierre Capital Journal, the Rapid City Journal, and the Nation's Center News. Affidavits of Publication are on file in the Department of Environment and Natural Resources Rapid City office.

The department received no petitions to intervene.

Motion by Blumhardt, seconded by Hilde, to approve Case No. 22-2007, Luff Exploration Company. Motion carried.

Motion by Duxbury, seconded by Hilde, to adopt the Findings of Fact, Conclusions of Law, and Orders for Case Nos. 20-2007, 21-2007, and 22-2007, Luff Exploration Company, and to authorize Mr. McCahren to execute the Orders. Motion carried.

OIL AND GAS CASE NO. 23-2007, TECTON ENERGY, LLC: Chairman Sweetman appointed Mr. McCahren as hearing chairman.

Roxanne Giedd stated that she had been advised that the contest involved with this matter has been settled. However, since Tecton Energy is a corporation, they still need to be represented by legal counsel, and Mr. Sumner was not present.

Mr. Morrison stated that he represents BTA Producers, who intervened in this matter. An agreement has been reached between Tecton and BTA, by which Tecton will acquire BTA's interest. He requested that the hearing be continued to allow the settlement to close. Mr. Morrison noted that ultimately, this matter will be dismissed.

Motion by Sweetman, seconded by Blumhardt, to continue Case No. 23-2007. Motion carried.

OIL AND GAS CASE NO. 24-2007, TECTON, LLC: Hearing chairman McCahren opened the hearing.

The purpose of the hearing was to consider the application of Tecton, LLC, for an Order amending Order 15-2007 to change the name of "the Borderline Field" to "the Border Field."

Chris Fling, Houston, TX, testified regarding Tecton's request.

Motion by Sweetman, seconded by Blumhardt, to approve the change of name. Motion carried.

Motion by Sweetman, seconded by Duxbury, to adopt an Order changing the name of the Borderline Field to the Border Field, and authorizing Mr. McCahren to execute the Order. Motion carried.

SURETY INCREASE FOR MINE LICENSE NO. 92-469, RUSSELL OLSON: A transcript of this discussion was prepared by the court reporter and is on file at the Department of Environment and Natural Resources.

Tom Cline reported that in August 2007, Minerals and Mining staff performed a routine inspection of the site licensed under this mine license. It was determined that the actual unreclaimed area (5.93 acres) of the site exceeds the unreclaimed area reported (3.0 acres) during the 2006 annual license review. According to state law, the remaining stockpiles and revegetated areas that have not been leveled are considered unreclaimed areas.

SDCL 45-6-71 requires an operator to submit to the board a surety in the amount of \$500 per acre of affected land. Mr. Olson currently has a surety in the amount of \$1,500, which is enough to cover three acres.

The department has advised Mr. Olson that in order to come into compliance, he must provide an additional surety in the amount of \$1,500.

Russell Olson appeared before the board, expressed his concerns regarding the law and additional surety requirements for unreclaimed acres.

A court reporter was present for this portion of the meeting and a transcript of the proceedings may be obtained by contacting Capital Reporting Services, PO Box 903, Pierre, SD 57501; telephone number 605-224-7611.

The meeting was digitally recorded and a copy of the recording may be obtained by contacting the Department of Environment and Natural Resources, 523 East Capitol Avenue, Pierre, SD 57501; telephone number 605-773-3886.

POWERTECH (USA) SOCIOECONOMIC CONTRACTOR: Mike Cepak reported that Powertech has requested approval from the Board of Minerals and Environment to select Knight Piesold and Company as the socioeconomic contractor for the Dewey-Burdock Uranium Mining Project.

Under the mining statutes, an applicant for a large-scale mine permit is required to prepare a socioeconomic impact study as part of its application. The law requires that the applicant receive board approval for the contractor to conduct this study. As part of its decision-making process on the mine permit, the board can consider socioeconomic impacts. The board can deny a mine permit application if it finds adverse socioeconomic impacts for the proposed mining operation and if that outweighs the benefits of the operation.

Mark Hollenbeck, project manager, discussed the proposal of Barbara Filas, Knight Piesold Consulting. He requested board approval of selecting Knight Piesold as the socioeconomic contractor.

Motion by DeMersseman, seconded by Duxbury, to approve Knight Piesold as the socioeconomic contractor for the Dewey-Burdock Uranium Mining Project. Motion carried.

OTHER BUSINESS

Bob Townsend provided an update on the department's 2008 bills.

The next Board of Minerals and Environment meeting is March 20, 2008, in the Matthew Training Center in Pierre.

ADJOURNMENT: Chairman Sweetman declared the meeting adjourned.

Linda Hilde 3/20/08
Secretary Date

Robert Duxbury 3-20-08
Witness Date

January 17, 2008

<u>License/Permit Holder</u>	<u>License/</u> <u>Permit</u>	<u>Site No.</u>	<u>Surety Amt.</u>	<u>Surety No.</u>	<u>Surety Company/Bank</u>	<u>DENR Recommendation</u>
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Transfer of Liability and Release of Surety:

Stolpman Sand & Gravel Bellingham, MN	83-60		\$3,280 \$4182 \$2,020 \$1,476 \$2,156 \$685 \$1,162 \$529	53475 63968 65313 10480 12801 14129 15324 70998	First National Bank, Pierre First National Bank, Pierre First National Bank, Pierre First National Bank, Pierre First National Bank, Pierre First National Bank, Pierre First National Bank, Pierre First National Bank, Pierre	Transfer liability and release \$15,490.
		60001	Section 4; T119N-R47W, Grant County			

Transfer to:

Consolidated Ready Mix, Inc.
Bellingham, MN

06-831	\$20,000	9916426951	Wells Fargo Bank, El Paso, TX
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Transfer of Liability:

Gratech Company, Ltd. Berthold, ND	98-662		\$20,000	6229315	First National Insurance Company of America Walworth County	Transfer liability.
		662006	N1/2 NW1/4 Section 24; T124N-R76W, Walworth County			
Miller Construction Isabel, SD	03-767		\$20,000	929293822	Western Surety Company	

Transfer to:

January 17, 2008

License/Permit Holder

License/
Permit

Site No.

Surety Amt.

Surety No.

Surety Company/Bank

DENR Recommendation

Releases of Liability:

Sherbrooke Asphalt Inc.
Detroit Lakes, MN

03-777

\$-0-

NA

NA

Release liability.

777002 Section 27; T122N-R53W, Day County

777003 E1/2 NE1/4 Section 36; T122N-R52W, Roberts County

Dearborn Township
Wolsey, SD

83-75

EXEMPT

NA

NA

Release liability.

75001 NE1/4 Section 19; T110N-R63W, Beadle County

Exchange of Surety:

Pacer Corporation
Custer, SD

311 & 467

\$31,700

12 14 62

Union Insurance Company

Exchange Surety No. 12 14 62 for Wells
Fargo Bank Letter of Credit No.
NZS606546 in the amount of \$147,150.
Permit 311 can be closed with
reclamation liability covered under Permit
467.

Reclamation Surety Increase:

Wharf Resources (USA) Inc.
Lead, SD

356

\$10,966,400

ILOC
S18572/191556

Scotia Bank
Toronto, Ontario, Canada

Accept increase of \$208,022 for a total of
\$11,174,422.

January 17, 2008

<u>License/Permit Holder</u>	<u>License/</u> <u>Permit</u>	<u>Site No.</u>	<u>Surety Amt.</u>	<u>Surety No.</u>	<u>Surety Company/Bank</u>	<u>DENR Recommendation</u>
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Request to Appear Before BME:

Russell Olson Murdo, SD	92-469		\$1,500	1035	Draper State Bank, Draper	Contesting surety increase of \$1,500.
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self